
UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF TEXAS

John D. Callaway,

Plaintiff,

versus

Department of Homeland Security,

Defendant.

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Civil Action H-13-1516

Opinion on Dismissal

1. *Introduction.*

A man sued a federal agency for discrimination. Because his complaint to the agency was too late, his claims will be dismissed.

2. *Background.*

In 2007, John Callaway – now 49-years old – applied to be a border-patrol officer with the Customs and Border Protection Agency. In November of 2007, the agency offered him a job conditional on his passing a background check. In December, the agency told him that its preliminary investigation showed him to be ineligible for the job because he had unpaid student-loan debt and his wife was not a citizen. He was told that he could ask the agency to reconsider within twenty days by sending additional information.

In late January of 2008 – more than twenty days later – he asked the agency to reconsider, noting that his wife was in the final stages of becoming a citizen. He also admitted that he was in default on his student loans. Soon after graduating, he had stopped paying. While he had been paying some of it since then, he acknowledged that he could not pay fully because of the penalties and interest. He asked the agency if he could continue the “pre-employment process” if he became current on the debt.

It is unclear whether the agency responded to his letter, but in July of 2008, it sent him a final rejection. In February of 2009, he called a counselor at the agency to file a complaint of discrimination based on his age and race. In July of 2008, the agency had instituted a maximum age of 37 for its applicants, and he said that the agency treated minorities better than whites.

3. *Timeliness.*

Callaway had 45 days from his rejection to complain of discrimination.¹ Because he did not contact a counselor until 206 days had passed, his claims are too late.

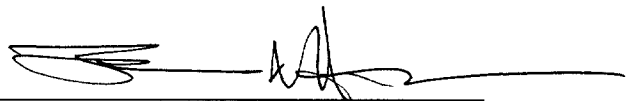
He says that he did not know that he could complain of discrimination. He says that he had tried to find out how and whom to respond to the rejection, but that everyone at the Transportation Safety Administration – his current employer – had told him that they could not help because it was a different agency.

He has not shown facts to justify an extension of the time to complain. While working for the Transportation Safety Administration, he completed training on his rights as a federal worker at least five times from 2005 to 2009. The training tells and quizzes attendees about the requirement to complain of discrimination within 45 days. He has not shown that he ever tried to contact someone at Customs and Border Protection after being told that his current employer was not the same agency. The time will not be extended.

4. *Conclusion.*

After being rejected for a position with the Customs and Border Protection Agency, John Callaway waited over six months before complaining of discrimination. His suit is too late, and his claims will be dismissed.

Signed on August 8, 2013, at Houston, Texas.



Lynn N. Hughes
United States District Judge

¹ 29 C.F.R. § 1614.105 (2013).